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FARM LAWS & FARMER'S PROTESTS – THE ENIGMATIC DILEMMA

-Palak Jain*

For the past four months now, every newspaper has dedicated at least some portion of its front page to update about the developments of the stand-off between the Central Government and the farmers. An added influence here is of the social media – so much so that it attracted some harsh comments from the international community and countries as well, which has been surely an embarrassing moment for India.

Some of us sided with the Central Government while others with the farmers. Some of us are convinced that the protests are infiltrated by separatists, influenced by opposition narrative and fueled by hooligans. While others are full of empathy and concern for the protesting farmers and almost shocked at the stubbornness of the Government. But for an academic mind, studying the entire controversy from the prism of law, economics and policy decision – it has been nothing short of a dilemma.

What is happening in India? Who is 'right'? Who is wrong? How these amendments impact the food landscape of India?

Before I began writing this op-ed, I pondered as to the narrative I should adopt. Should it be pro-farmers or pro-government – I wondered. Finally concluded that we live in the post-enlightenment era. Unlike enlightenment era, we can never be sure about the veracity of the information which is shaping our rationality. Thus, instead of choosing either black or white, the wisdom lies in acknowledging the 'grey-ishness' of the controversy from both sides.

What are the farm laws after all?

In September 2020, President gave his assent to three farm bills: Farmer's Produce Trade and Commerce (Promotion and Facilitation)Act, 2020; Farmer's (Empowerment & Protection) Agreement of Price Assurance and Farm Services Act, 2020 and Amendment to Essential Commodities Act, 1955. Below mentioned are quick pointers about the provisions of these Act:

FARMER'S PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) ACT, 2020:

As per the APMC Act, the farm produce could be sold by the farmers at the APMC Mandi only to the traders and middlemen (also known as *Arhtiyas*). This Act intended to do away with this restrictive regime and allowed the farmers to sell their produce anywhere through inter-state and intra-state trade. It further states that no fee/cess would be imposed if the produce is sold outside APMC. Thus, Central Government also branded it as *Green Revolution 2.0* and called it the biggest economic reform in the agriculture sector intending to liberalize the agri-market thereby helping in higher prize realization, reduce middlemen, do away with cascading effect of multiple fees – thereby finally creating a win-win situation for both farmer as well as the final consumer.

FARMER'S AGREEMENT ON PRICE ASSURANCE ACT, 2020:
Enacted with the stated intention of promoting contract farming and assuring *fair and remunerative* prices thereby aiding in streamlining of supply chain, enhancement of farmer's income, promote higher investment in the agriculture sector and boost food processing.

AMENDMENT TO ESSENTIAL COMMODITIES ACT, 1955:
Under this Act, the government regulates the production, supply and distribution of commodities which are declared as 'essential'. The Central Government opined that the fear of bringing agriculture commodities under the Act prevented traders from undertaking bulk procurement and resulted in poor investment in Storage Facilities, impacted food processing industry and agricultural exports. The Amendment provides that the Central Government may regulate the supply of food items such as cereals,

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pulses, onion etc. and that the stock limit on agricultural produce must be based on price rise.

Concerns

Legislative Powers of the Centre & Cooperative Federalism

India is a federal country. The drafters of the Constitution were convinced that if India is to be kept together as a single unit it is necessary to have federal set-up with a strong Centre. Simultaneously, some subjects were to be governed by those who are '*closer to the grass-root level'*. Therefore, the subject of Agriculture was kept in the State List. Reasonably so, since every state has different geographical advantage and thus, different requirements.

As per constitutional law, every level of government has complete power to enact laws on all direct as well as ancillary issues that fall within that subject. Centre does not have power to enact agricultural laws. However, it has the power under Entry 33 of the Concurrent list i.e., trade, commerce, supply and distribution of domestic & imported products that it claims to have invoked.

However, the question that arises here is – is Agriculture a form of trade or commerce, or for that matter industry?

In cases of *State of Rajasthan v G Chawla* (1959), courts have propounded the doctrine of "pith and substance" to determine the character of legislation that overlaps between entries. The constitutionality of legislation is upheld if it is largely covered by one list (that is, in pith and substance) and only incidentally touches upon the other list. If not, it amounts to a colourable exercise of power and thus, unconstitutional.

Au contraire, had India gone by that argument, could we have imagined the Green Revolution in the first place? The question is open for judicial scrutiny. However, one thing that is certain is – India has had a strong fabric of cooperative federalism between Centre and State. Assuming the reforms to be indeed beneficial, it would have been constitutionally ideal to take the state governments into confidence before swiftly passing the law buried in the over-confidence of parliamentary majority.

MSP – A Legal Right?

One of the major concerns of the farers is that they may be forced to sell in the trade area below MSP, leading to a possibility of exploitation by the MNCs.

In India there are three types of farmers – a) farmers who produce for self-consumption, b) the farmers who own land of a few hectares, and c) the commercial farmers. The protests are primarily dominated by the second-type as the laws affects them the most. The trade areas are highly fragmented and unregulated and thus, the concern is lowering of bargaining power in the trade area. The first ones do not need to sell it and the third ones are already financially well-off to be bothered. It is the second that is hit the hardest.

There are two issues that need to be considered here :-

The empirical evidence of impact on farmers in States who have liberalized APMC already, such as Bihar and Kerala. As per a study by National Council of Applied Economics (NCAER), there was no significant improvement in the last 13 years after the repeal of APMC Acts.

Secondly, Is MSP a matter of legal right?

One concern of the Central Government is to encourage crop diversification other than rice and wheat – in order to not only increase the income of farmers but also to give a push to food exports. Further, excessive production of rice and wheat leads to over-storage in government granary which finally end up being eaten by rats.

But has the Central Government addressed the fundamental problem?

The fundamental problem is – MSP is announced for a few crops such as wheat and rice only. That too before the sowing. For other crops such as millet, there is no encouragement from the government. As a result, farmers tend to only sow crops, especially in states like Punjab and Harayana which they deem 'profitable'.

If the objective is to really encourage other crops, the government should first look into the issue of incentivizing crop diversification. A good lesson may be learnt from the floor rate set by the Union in case of minimum wage of labourers.

Simultaneously, it is also for the middle-level farmers

to understand the economics of MSP and how making MSP a legal right may be disastrous idea for the smaller farmers. A simple economic analysis of such a measure will tell us that prohibiting purchase of agriculture produce below MSP, especially through criminalization of such act could leave millions of farmers without an avenue to sell and possibly divert tax payers money for the benefit of traders and corporations.

Basic Rule of Economics: *Wherever price floors are set for only few (and not all) crops, there will be surplus production of the few, thereby creating an imbalance.*

Therefore, the prudent way out should be of an understanding from a macro-economic perspective – to either provide a floor rate for all crops or undertake necessary reforms which reach the smallest of small farmers while simultaneously incentivising diversification of food basket.

The Crackdown of Civil Liberties vis-à-vis Civic Responsibility

Farm laws and the farmer's protests are two subjects that need to be analyzed disjointly. One of the most significant issue that the entire controversy has highlighted not only within India but on an international platform is the severe crackdown of civil & political liberties in India and the inability of the Constitution or the judiciary to guard them.

Prior to the lockdown, Indian government was already facing criticisms on an international platform for its use of iron hand selectively during the CAA protests. The Farmer's protests have, to an extent, highlighted the inability of the government to allay the fears of the farmers. Adding fuel to fire was the use of narrative which suggested that the concerns are nothing but political propaganda of the separatists and opposition. Such extreme comments from the head of the government, i.e. the Prime Minister highlights the utter disregard to the farmer's concerns.

Even if the concerns are ill-informed, as the government claims, the duty of the government in such situations is to address them, persuade the target group and deal with their circumstances empathetically. Use of terms like 'khalistani' 'urban naxal' etc. certainly did not help the case of the Central Government.

Another issue is that of selective application of COVID norms. While there is no denial to the increase in severity of COVID pandemic in public gatherings, the selective restrictions only on the farmers, while on the other hand allowing election rallies highlight the heed paid by the executive to the right to protest. Certainly, placing restrictions is within the powers of the executive, but here comes the aspect of what is legal and what is within the purview of constitutionalism. There are certain basic principles on which our polity is based and selective application of those principles in situations of convenience is bound to raise eyebrows.

Simultaneously, it is also true that protest leaders are responsible for peacefulness of the protests. Mahatma Gandhi suspended the protests after the Chauri Chaura incident – portraying how a leader leads. The right to protest comes with responsibility – the responsibility to take care of anything that happens during the protest and the responsibility to not malign national image on the Republic Day. It does not seem right for a leader to blame every mishap on the government when he is duty-bound to ensure peacefulness of the protest.

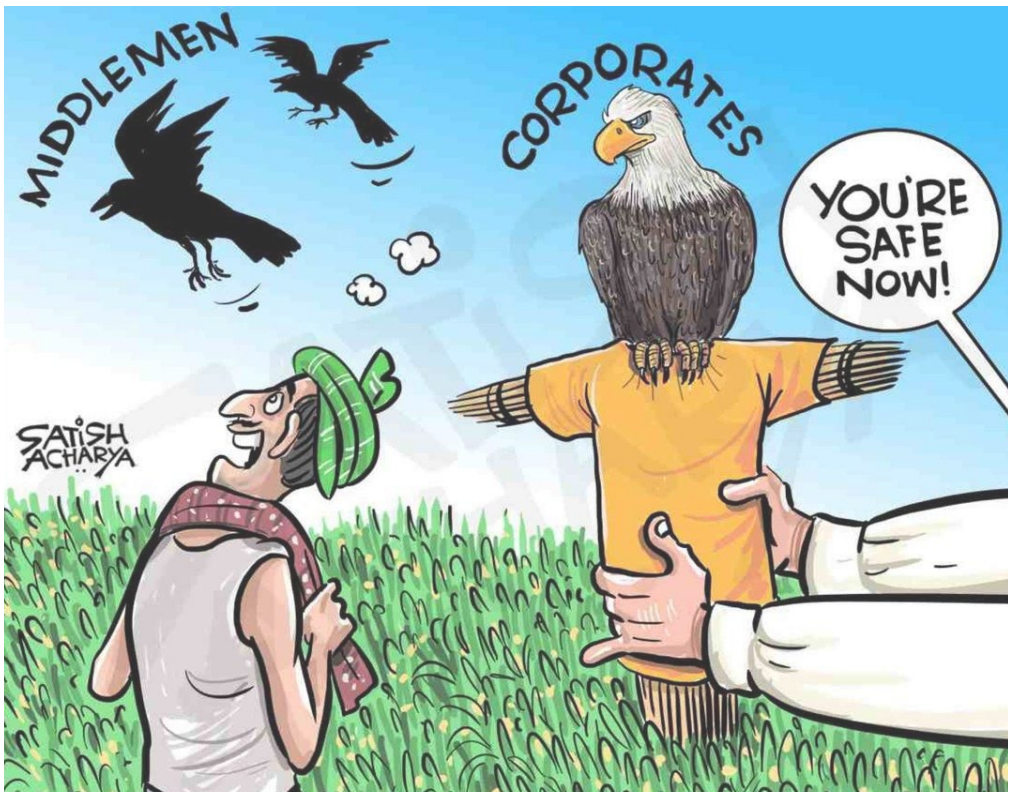
Committee by Supreme Court – A relief?

The Supreme Court finally ended its silence on the controversy by expressing an opinion that on the face of it appears to be in favour of farmers. However, the difference between staying a law and staying the implementation of a law is not immediately clear. *Secondly,* it further sets a dangerous precedent by setting up an executive committee on the ground that the negotiations have turned stalemate.

Under the Constitution**,** judicial review is the only avenue for the court to test the legality of a law, whether passed by Parliament or as ordinances by the government. The only way the court can intervene is by striking down laws or at least part of them as unconstitutional, or upholding them.

We have witnessed the increasing judicial tendency to appoint executive committees to adjudge the validity of executive decisions instead of judging it on merit – primary example being the case of internet restoration in Jammu & Kashmir.

This significantly impacts the public trust in the institution of judiciary. Why would a person approach the Court if it is going to finally direct the very executive who made the decision to judge its constitutionality?



Source - Satish Acharya, editorial cartoonist

Conclusion

If a country prospers economically, it is the entire population that *ideally* reaps the benefit of it. Therefore, the right way out of this deadlock will not be to either to other-out the farmers, nor will it be to let anarchy prevail. It has been rightly analyzed by several economists that no matter how beneficial these reforms may be for the agriculture sector, the change appetite of the small and medium farmers amidst the pandemic is very low. Therefore, the reforms should have been undertaken keeping the most significant stakeholder (and beneficiary) in confidence and should have been brought into force in a phased manner.

As the title of this article reads, it is a dilemma from an academic perspective to choose sides. Rightfully so – in a country where more than 50% of the population is dependent on agriculture and we call farmers *anna-data (food giver)* the issue should not be of Government versus Farmers (as it was in colonial times).

Several sections of the population today argue – Why special privilege to agriculture? Why should they not be treated alike other industries? Answer is – because it is not merely an industry for India. It is the primary source of livelihood for 60 % and contributes 18 % to the GDP, plays a significant role in India's exports and most importantly, impacts the food security of India. Unlike other industries, several years of reforms have not reached the target population and is even more prone to exploitation.

India is a welfare state and agriculture engages some of the population that needs welfare the most, unlike industrial or service sector. Here, the interests are at stake not of commercial farmers, but of farmers owning land of a few hectares. While the step of the government is well-intentioned to increase the farmer's income, the government is yet to give meaning to its motto of *sab ka sath, sab ka vikas.*

Therefore, for an effective resolution, it is necessary to have a dialogue that is based on understanding from both sides instead of rigidity on part of farmers and legal, political and social ignorance on part of the Centre.

PAID MENSTRUATION LEAVES

- *Sanya Bhutiani*
*Aditi Rathi**

Paid Menstruation leave is a topic that has sparked much controversy around the world. The recent news of Zomato and the order of the High court of Delhi *(Delhi Labour Union vs UOI & Anr)* has generated a huge debate in India too. It is a double-edged sword with supporters on both sides. An important question recurring in these conversations is whether paid menstrual leaves are a form of "reverse sexism" that could potentially give rise to greater injustices against women or if they are a much-needed change in the direction of gender equality at the workplace.

Women have struggled hard for many years to not be gendered in workplaces and to ensure that menstruation is not treated as a disease. The entire discussion becomes extremely regressive and backward when something as natural and inevitable as a menstrual cycle is used as a pretext to further gender women at the workplace
As was noted by *Barkha Dutt*, a prominent Indian journalist, paid menstrual leaves would eventually, contribute to gendering at the workplace and increase the *biological determinism* of gender. Biological determinism is the idea that all human behaviour is dictated through genes and other biological attributes. It operates against women when it is used to give justification for sexist behaviour: like lower pay, or lower employment levels, etc.

Even today the gender gap in employment is massive. If an employer is made to pay the same amount to a woman who works for only 27 days in a month, the same as a man who works for 30 days, the employer will, as matter of course, choose to employ more men. Such a policy will only serve people who believe that women don't deserve the same paycheque as their male counterparts. Additionally, the law provides for '*equal pay for equal work'*, however, if any people are made to work longer or more than others, it will only lead to perceived injustices and will add to the already existing stereotypes and prejudices against women.

Most women face mild discomfort, pain, and problems like abdominal cramps and pain during their menstrual period. The medical term for this is "dysmenorrhea" and is a perfectly natural condition that can be managed with regular exercise, pain killers, and hot water bags. The symptoms vary from person to person and such leaves generalize individual experiences. Since only about 5 to 10% of women face extreme pain owing to ***disorders*** like endometriosis, PCOS, and PCOD; they should be treated accordingly. These should be ideally considered under the broader category of paid medical leaves – which should be increased for everybody.

Further, these leaves will be prone to misuse. Since we have extremely diverse and different bodies and share vastly different experiences, it is impossible for the employer to keep track of leaves making it easy for anyone to take advantage of, or misuse these leaves for recreational purposes. Additionally, such a record of women's menstruation leaves and therefore, their cycles is a gross violation of their *right to privacy* which is protected under *article 21* of Part 3 of the constitution.

For the most part, menstrual leaves will mostly be out of the reach of women who need them the most. Women who work in the informal sector, in most cases do not have adequate access to safe sanitary products, healthy nutrition and face greater menstrual problems and pain. The NSSO data of 2011-12 shows that a majority of women take on employment in the primary sector, in the realms of agriculture and farm work. In the manufacturing sector, they are often found to be working in labour-intensive jobs with long hours and low pay. If the luxury of availing menstrual leaves is only granted to upper class, urban, women then the disparities between the 'haves' and the 'have-nots' will only rise.

The need of the hour is not paid menstrual leaves, but equal and equitable access to sanitary products; proper

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nutrition; physiological education to both girls and boys, and sensitivity among people. Like every coin has two sides, this discussion too, has a completely different aspect that needs to be understood and taken into account.

India, even in the 21st century is a male dominant country and has seen quite a few progressive and regressive changes in the past. India is a country of warped contradictions and the majority of people who hold authoritative positions are men, who do not possess much knowledge on the topic and are relatively unenlightened of menstruation.

Women's body physiology is created in such a way that they can reproduce and further the population of our country, while the bodies of men are vastly different and perform vastly different functions. It is therefore unfair that we use the same criteria to compare both the genders on the basis of efficiency

Different bodies respond differently to the pain and discomfort experienced during menstruation. Given the difficulties and biological complexities that women have to go through, it is of utmost importance that a bill is passed allowing women to avail themselves the rights of paid menstrual leaves as and when required.

In India, the practice of family planning is still largely absent and hence women have the choice of conceiving as many numbers of times as they wish. Specific laws also mandate paid maternity leave of approximately 3 months every time that woman gets pregnant.
Unlike pregnancy, however, menstruation is not a decision that women get to make, it is a bodily feature that they need to accept and endure by default, in addition to the suffering and the psychological distress due to unexpected hormonal fluctuation, the shedding of the womb lining triggers excruciating cramps that women have to go through and hence it is vital that every girl and woman in every industry/industry/profession/job and hence sector/industry/profession/job and not just for women engaged in the white-collar work.

While discussing this, it is of extreme importance to not bias our lens and focuses on only one section as women from all sections irrespective of the kind of work they do menstruate because if this is not followed it will violate *article 14* that is *right to equality*.
The time has come to seriously consider introducing a law that makes it mandatory for employers to grant women menstrual leave.
Labour laws in India are very complex and myriad and the public sector and the private sector establishments are regulated by the central or state government depending on the nature of work they are engaged in and the number of people they employ. Some Companies like Zomato provide 7 days of sick leave to the employees in a year. With the introduction of the new period leave policy women will be getting ten days sick leave for the whole year and only one day per menstrual cycle. That being said, women who do not work at the kind of establishment providing menstrual leaves have no other option than to utilize their very limited medical leaves when they suffer from menstrual cramps which will again go against their right to equality as men - who do not suffer from this get the same number of leaves
While the exact number of menstrual leave days is still not decided and should be put to discussions and deliberations, there still is a pressing need for a law to be passed by the parliament to ensure that women across states and various establishments, whether public or private, are entitled to the same number of period leave days.

Although *Article 15* of the Constitution provides for a bar on discrimination on the grounds of sex, *clause 3* of the article authorizes the state to pass laws making any special provision for the comfort of women by providing safe and hygienic working conditions. Hence, taking such measures will destigmatize periods and bring this into everyday discourse and remove it as a taboo.

There are compelling and conflicting arguments to both sides, and it is therefore very difficult for anybody to come to a conclusion about the kind of decision that needs to be taken that is beneficial to everyone at large, for both the short term as well as the long term. Given that period leaves may arouse the concept of discrimination and inefficiency and may lead to people taking unfair advantage of the extra leave, it is important to thoughtfully and critically implement a

policy that has the potential to improve the health and wellbeing of menstruating people in order to improve efficiency and productivity, which could otherwise get hampered because of chronic pain. One such solution could be giving only one period left per month since everybody should have the opportunity to work in a supportive and considerate environment. Another way of accommodating the needs of people is by providing more medical needs to all people. It is also equally important to ensure that such benefits are enjoyed by people of all sections of the economy and society and aren't limited only to the privileged.

Bringing positive changes in the working environment like separate washrooms and abundant supply of tampons and sanitary napkins and by inculcating knowledge about this problem to every other employee we can normalize the concept of periods and women will get the dignity and respect they deserve.

RIGHT TO CHOOSE PARTNER AND THE CASE OF ANTI CONVERSION LAWS

*-Sarthak Gupta, Charvee Jha**

The Governor of Uttar Pradesh recently gave her assent to the Uttar Pradesh Prohibition of the Unlawful Conversion of the Religion Ordinance 2020 (hereafter referred Ordinance) with the objective of restricting 'unlawful conversion from one religion to another by misappropriation, force, undue influence, coercion, attraction or by any fraudulent means or by marriage." Similar ordinances have also been proposed/passed in other states such as Madhya Pradesh, Haryana etc.

The supporters of this law argue that it is intended to curb the increasing incidents of forceful and misrepresented conversions. In defence to the criticisms, it is also argued that the consenting inter-faith couples are free to marry under Special Marriages Act without changing their religion *only for the purposes of marriage.*

While this stand seems to be well-intentioned *prima facie*, a deeper analysis reveals the possible and in fact, a real threat to the very constitutional values and rights enshrined in our Constitution – namely personal liberty, freedom of choice and privacy of two adult consenting couples. While the law is intentioned for the benefit of women who are forcefully converted in some parts of the country, the impact is also felt on interfaith couples. In fact, the law harms such couples more than it benefits the victims of such conversions. It is argued that the Ordinance/Acts shall not be to stand the test of constitutional scrutiny at different levels.

Human Rights, the right to marry is not explicitly considered as a fundamental or constitutional right under the Indian Constitution. Even though marriage is governed by various statutory provisions, acknowledgment of it as a fundamental right has only been constructed through judicial decisions of the Supreme Court of India. Such a proclamation of law is consistent with the law throughout India under Article 141 of the Constitution.

Among the first cases to address these issues was *Lata Singh v. State of UP*, filed in 2006, pertaining to inter-caste marriage. The Supreme Court observed that, since the petitioner was a major, she had the right to marry whoever she wanted and that no law precludes inter-caste marriage. However, the judgment widely attributed to the case and there was no "declaration of law" as such by the Court. However, the Court

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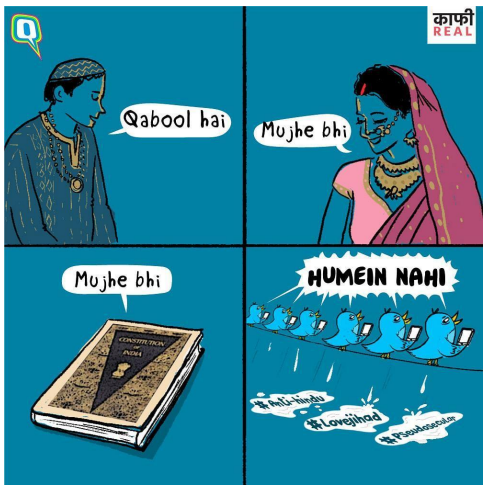
expressly recognized the right of the petitioner to choose a partner of its choice. Furthermore, in the scenario of *Shakti Vahini v. Union of India*, the SC reaffirmed that the right of a person to marry, irrespective of their religion, is emblematic of their fundamental right under Article 21 of the Constitution.

This law, which is rather *celebrated* by several state government raises two pertinent questions – *firstly,* is it prudent to start with the burden of proof on the couple themselves? *Secondly,* is it within the powers of executive 'to permit' and 'to investigate' a matter of personal choice and liberty?

Section 12 of the UP law makes it even worse and as such, the burden of proof that conversion was 'lawful' impinges on the individual who *'caused' t*he conversion. The perception of the person who has been converted isn't taken into consideration in any way which merely perpetuates the Brahminical-patriarchal attitude towards women as 'property' further. In a scenario where the girls in the family are considered a matter of repute in Indian families, such a law may be used by the bride's parents to intimidate the interfaith couple, eventually leading to the Groom being forced to demonstrate that the conversion was not a persuasive one.

It further allows the parents, brother, and other relatives of the girl to lodge a complaint. The need of the hour is to introspect if it is legally prudent to impinge the personal liberty of an adult consenting girl to be subject to the approval of others? Not to mention, there are several extremist pressure groups influencing the family in such cases to file a complaint in the name of social honor and religious duty. How is this any different from a legally sanctioned case similar to that of khap panchayats?

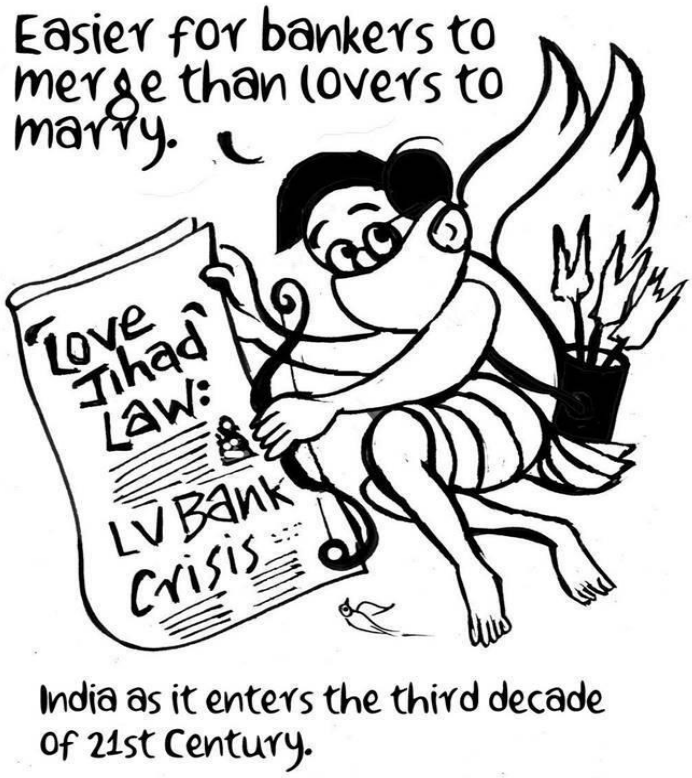
The Concern of Choice w.r.t to privacy was dealt with comprehensively by the Constitution Bench of nine Judges in Justice *KS Puttaswamy (retd) and another v. Union of India and others*., the Court stated unanimously that "the right to privacy is protected as an inherent part of the right to life and personal liberty referred to in Article 21." In the prevailing view delivered by Justice. DY Chandrachud, the Court held in paragraph 81 that, in the Indian context, the fundamental right to privacy would cover at least the following three aspects: (i) the privacy of the person concerned; (ii) the privacy of the person concerned; and (iii) the privacy of choice, which protects the individual's autonomy from fundamental personal choices. Subsequently, the SC, in the case of *Shafin Jahan vs Asokan K.M. & Ors*., upheld the right to choose a life partner as an inherent right, regardless of religion or belief.



Source - The Quint

The supporters of the law ask whether it is correct to convert *only for the purpose of marriage*. While the case of conversion only for the marriage requires further legal scrutiny, it is necessary to not be blind by the social fabric of India. Many couples, though inter-faith, consent towards having a common religion in future for the convenience of their child. Further, even the couples who are, in fact, marrying under the SMA are interrupted, scrutinized and disapproved by the society at large. In such a case, it becomes virtually impossible for the inter-faith couples to marry either under SMA or under any other personal law.

The laws to "stop the jihad of love" and "give justice to women" is laid down in the language of aggressive or manipulative conversion. The law is politically driven towards majoritarian appeasement and the government seems to be much more concerned in assaulting the 'converter' in this case. Such a law is unconstitutional backed by the numerous judgments of the Indian courts, which enshrine the right to choose a life partner and the right to religion and are most likely to be ruled out in the future. It will only lead to harassment of inter-faith couples and restrict their freedom. Most importantly, it pushes women back into parental and community control highlighting the deep-seated patriarchal bias of the law. It may be likely to *hold back*



Source - E.P. Unni, The Indian Express

women from making life decisions on their own and their decisions will only be accepted if it's within the ambit of her parents' interest.

Lastly, marriages are a powerful tool that helps to bridge the differences between various social groups based on caste and religion. If a couple wants to get married irrespective of their faith, it is not the State's business to allow or restrict them. Rather, they should instead help facilitate the couples to exercise their freedom.

LAW EXPLAINED

-Nayanika Goyal

WHAT ARE HORIZONTAL RESERVATIONS?

The issue of 'horizontal reservation' has been making headlines in the country for the past few months. In addition to Vertical reservations (which are provided to groups like SCs, STs, and OBCs), horizontal reservations refer to those provided to other categories of beneficiaries such as women, the transgender community, people with disabilities, etc. These reservations cut across vertical reservations. Article 15(3) of the Indian Constitution contemplates horizontal reservations by providing for women as a separate 'class' of beneficiaries in addition to the groups identified by Article 16(4).

In the case of **Saurav Yadav v. State of Uttar Pradesh, 2020 SCC OnLine SC 1034,** the Supreme Court clarified the interplay between vertical and horizontal reservations. The case held that a candidate belonging to the horizontally reserved category, but scoring high enough to qualify in the unreserved category, would qualify in the unreserved category and would not be considered as having occupied a seat in the reserved category.

Recently, the Tamil Nadu government took a policy decision which would implement 7.5% horizontal reservation. The beneficiaries of this legislation are students who have qualified NEET and were educated from Class VI to Higher Secondary Course in government schools. This policy would apply to undergraduate programmes in medicine, dentistry, Indian medicine and homeopathy, while seats reserved for all India quota are kept exempted.

This move followed recommendations of a Commission that was headed by retired High Court Judge P. Kalaiyarasan. The Commission's report had observed that there exists disparity amongst students of government schools and those of private schools. Furthermore, it stated that the students of government schools are in a comparatively disadvantageous position due to the interplay of various socio-economic factors. The legislation is aimed at bringing real equality between students educated in government and private schools.

JUDGMENTS IN *FOCUS*

Compiled by Anchal Kathed

PROTECTION OF RIGHTS OF PRISONERS IS THE DUTY OF THE STATE: BOMBAY HIGH COURT

A division bench of Justices SS Shinde and Manish Pitale asked the State as well as the National Investigation Agency their main apprehension to the release of 81-year-old poet- activist Dr. Vasavara Rao booked in relation to Bhima-Koregaon (alleged maoist links) Incident on the medical grounds given his advanced age and neurological conditions.

The Court further asked the State not to consider issues involving the fundamental rights of prisoners as adversarial litigations, "When it comes to fundamental rights of the prisoners it is not an adversarial litigation, it is the duty of the state."

The Court then adjourned the case for February 3, with a rider that the Bench's comments during the proceeding were only for the purpose of discussion

PROTECTION TO THE SAME-SEX COUPLE FACING THREAT TO LIFE BY ALLAHABAD HIGH COURT

The Allahabad High Court last week granted protection to a homo-sexual couple who alleged that they are being threatened with violation of their rights enshrined under Art. 21 only on the ground of sexual orientation. They also alleged to have faced hard resistance at the hand of their family.

The Court noted that both the petitioners are major, earning handsome amount and are living in live-in-relationship since a couple of years and are voluntarily living with each other on account of their sexual orientation.

The Court, while quoting the Apex Court's ruling in the case of Navtej Singh Johar & Ors. v. Union of India, (2018) 10 SCC 1, granted protection from harassment to the couple.

KERELA HIGH COURT ON CUSTODIAL VIOLENCE

Kevin Joseph, a Dalit Christian, was murdered in 2018, and was later found to be a victim of the case of Honour Killing. Kevin and Neenu Chacko applied for registering their marriage but the very next day he was abducted from his home at Mannanam. Two days later, his corpse was found in a water canal in Kollam district. Tittu Jerome was found to be in the gang involved in killing Kevin and was sentenced to life for abduction, murder and criminal conspiracy.

By filing a Habeaus Corpus case at the Kerela High Court, parents of Tittu Jerome alleged Pookappura jail authorities of brutal violence. The Honourable Court directed district judge to report about his condition. The

bench also directed that the convict should be provided with a guard in the Medical College Hospital from the police force and no central prison personnel should be allowed access to him.

"The power to punish is with the courts. We will not allow 'eye for an eye', 'tooth for tooth' practices", Justice Vinod Chandran orally remarked during the hearing.

UNDERSTANDING 'GENDER IDENTITIES'

One Anjali Guru Sanjana Jaan, moved to Bombay High Court to look into the rejection of her nomination form by the Returning Officer for a local Gram Panchayat Election. That rejection was based on the premise that a transgender cannot fight from a seat reserved for a 'woman'.

There was a clear ignorance of the error-loaded bureaucratic system of elections was a disappointing spectacle of the judgement. Further, the Court opined gender as a choice that oscillates between a man and a woman. A deeper problem is that the language of law fails to tackle the oppression of petitioner.

This judgement concludes that this is the high time to remove the contradictions in the name of the gender at the earliest. There is also a need to articulate policies, especially for transgenders, in terms of recognition, welfare and social justice, and not merely be construed as an instrument for state's convenience – the illusion of empowerment.

LIFE & LIBERTY OF WEAKER SECTIONS OF SOCIETY & ROAD DISCIPLINE

The Gujarat High Court has registered a suo moto PIL to monitor certain important issues touching the life and liberty of the weaker sections of the Society and also to deal with their valuable right of life, housing and shelter. The Division Bench Chief Justice Vikram Nath and Justice Ashutosh J. Shastri registered a PIL titled 'To Regulate Road Discipline And To Give Shelter To Weaker Sections'.

The development comes days after a tragic and disturbing incident which happened in Surat, where an empty dumper truck ran over migrant workers, killing 15 persons on the spot including 8 women and one child.

Court's observations:

1. Right to Housing, Right to Shelter is recognized as a valuable right under Article 19(1)(g) along with Right to Life under Article 21.
2. State and Municipal Corporations have constitutional and as well as statutory duty to provide residential accommodation to poor and indigent weaker section by using vacant land under Land Ceiling Act.
3. The Twelfth Schedule (Article 243-W) deals with planning for economic and social development roads and buildings and slum improvement and upgradation.
4. Migrant construction workers and their families are required to be accommodated in temporary accommodations with basic services and social infrastructure.
5. Safety of children on construction site, their wellbeing is required to be looked after by the construction contractors and local bodies.
6. Several initiatives under Jawaharlal Nehru National Urban Renewal Mission (JNURM), Rajiv Awas Yojna (RAY) and Pradhan Mantri Awas Yojna can be taken shelter of for the purpose of temporary accommodation

NEWS & DEVELOPMENTS

Compiled by Rishi Chouksey

FINDINGS OF NATIONAL FAMILY HEALTH SURVEY – 5

Fifth edition of National Family Health Survey is released in December 2020. The key findings of Phase 1 National Family Health Survey 5 residing in 22 States/UT's in India.NFHS-5 is a nationally representative household survey providing data on population, health and nutrition at the district state and national level.

Sex ratio at birth (SRB) has remained unchanged or increased in most States and UT's. Majority of states are in sex ratio of 952 or above with an exception of Telangana, Himachal Pradesh, Goa, Dadra & Nagar Haveli and Daman & Diu having SRB less than 900. There has been increase in child marriage in Tripura, Manipur and Assam. Child nutrition indicators Showed a mixed pattern across the states/UTs.

Sikkim, J&K, Goa and Assam were the best performers as they record a reduction in Infant and Child mortalities; NMR, IMR and U5MR while Bihar recorded the highest prevalence of NMR(34), IMR(47) and U5MR(56) and Kerala reported the lowest death rate in all the 22 States and UTs. Spousal Violence has recorded an increase in Sikkim, Maharashtra, Himachal Pradesh, Assam and Karnataka (Highest).

CASTE BASED CENSUS

State government of Tamil Nadu set up a commission to collect caste wise data on population and submit the report to the state. The decision to set up a commission has been in the backdrop of pre-election agitation organized by Pattalii Makka katchi demanding 20% reservation in education and government jobs for the vanniyar community.

Violent agitation of Vanniyar community is 1987-88 in Tamil Nadu led to creation of 'Most Backward Class' category entitled to 20% reservation. However, over a period of time, Vannier Community were dissatisfied about being clubbed with over a hundred other castes for reservation in education and government jobs.

Even the SC has held that reservation cannot be demanded as fundamental right still communities feel that this is the only way for their upward social and economic mobilization. Caste has an emotive element and thus there exist a political and social repercussion of caste census. There has been a concern that this may help and solidify and harden identities, due to this repercussion, nearly the decade after the SECC a sizeable amount of its data is unrealized or realized only in parts

Institutions promoting social justice in India -

NATIONAL COMMISSION FOR WOMEN

-Nayanika Goyal

The National Commission for Women was set up as **statutory body** in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt.of India). It's functions Include:

- Reviewing the Constitutional and Legal safeguards for women,
- Recommending remedial legislative measures,
- Facilitating redressal of grievances, and
- Advising the Government on all policy matters affecting women

Section 10 of the said Act lays down the mandate of the Commission. The Commission is empowered to investigate and examine all matters in relation to safeguards that are provided to women by the Indian Constitution and other laws. While investigating the matters related to deprivation of women's rights, the Commission enjoys all powers of a civil court trying a suit. The Commission can take suo moto notice of matters wherein women's rights are threatened, or laws and policies providing protection to women are not implemented properly. In addition to these, the Commission is empowered to undertake numerous activities in order to promote, safeguard, and protect women's rights in the country.

NCW played an important role in the landmark case of **Smt. Seema v. Ashwani Kumar,** transfer petition (civil) No 291 of 2005, wherein the hon'ble Supreme Court requested and relied on the Commission's suggestion with respect to compulsory registration of marriages. In the matter of **Fakhruddin Mubarak Shaik Vs. Jaitunbi Mubarak Shaik**, The NCW has intervened in the Supreme Court of India to support the stand of Jaitunbi claiming divorced women's entitlement to maintenance beyond the iddat period.

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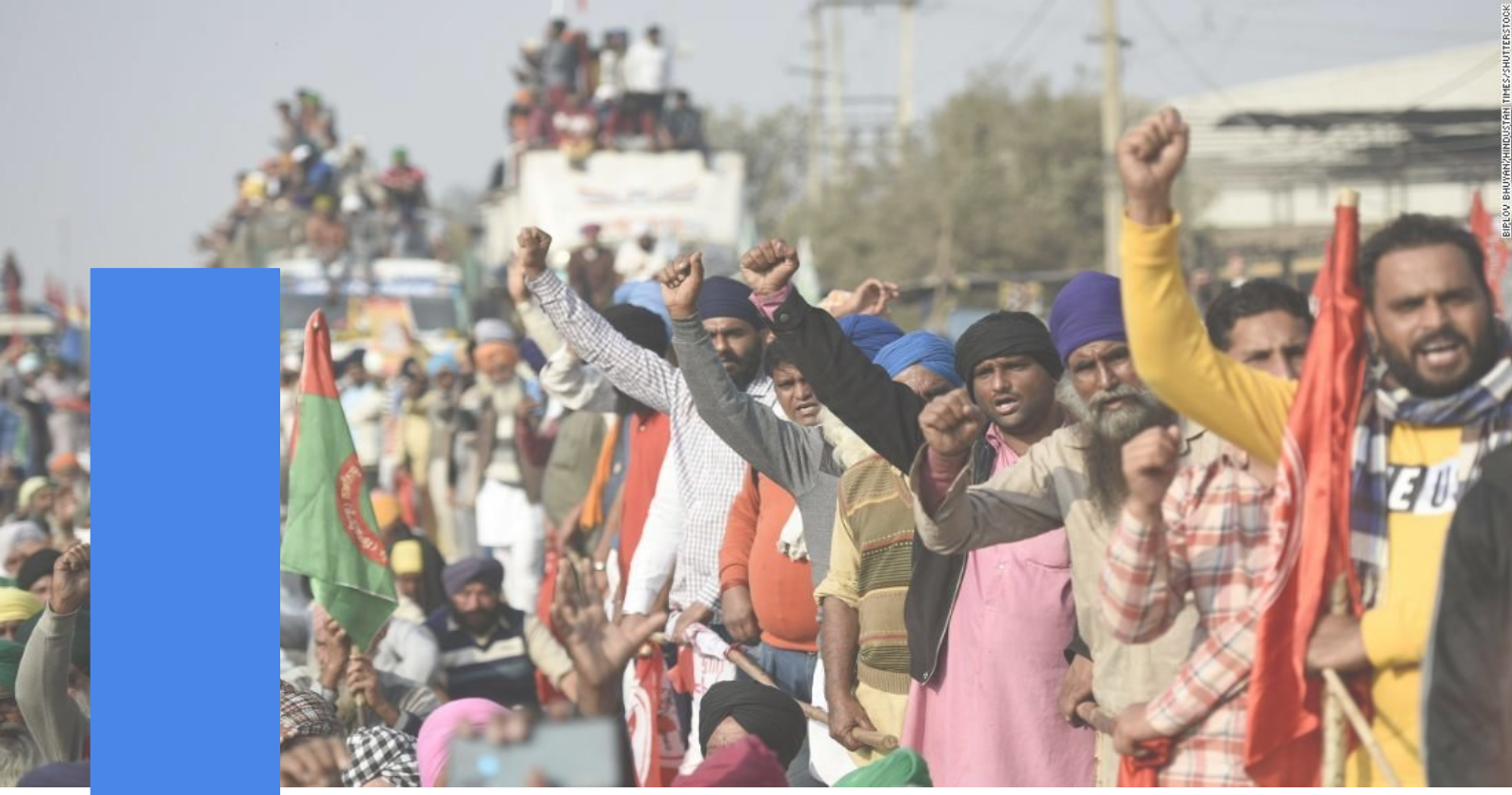

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